



STATE OF MONTANA REQUEST FOR PROPOSAL (RFP)

RFP Number: Opera House 2008	RFP Title: Virginia City Players at the Opera House
RFP Due Date and Time: Must be <u>received</u> by 5:00 p.m., Local Time December 8, 2008	Number of Pages: 13, plus Appendix

ISSUING AGENCY INFORMATION	
Business & Marketing Manager: Karlee Smith	Issue Date: November 10, 2008
Montana Heritage Commission 101 Reeder's Alley Helena, MT 59601	Phone: 406-449-6522 Fax: 406-449-7081 Website: http://gsd.mt.gov/osbs/Default.asp , (Agency: Dept. of Commerce) Or www.virginiacitymt.com , What's New

INSTRUCTIONS TO OFFERORS	
Return Proposal to: Montana Heritage Commission 101 Reeder's Alley Helena, MT 59601	Mark Face of Envelope/Package: RFP Number: Opera House 2008 RFP Due Date: December 8, 2008 Special Instructions: A mandatory site tour will be held at the Opera House in Virginia City at 10:30 a.m., November 19, 2008
IMPORTANT: SEE STANDARD TERMS AND CONDITIONS	

OFFERORS MUST COMPLETE THE FOLLOWING	
Offeror Name/Address:	Authorized Offeror Signatory: (Please print name and sign in ink)
Offeror Phone Number:	Offeror FAX Number:
Offeror Federal I.D. Number:	Offeror E-mail Address:
OFFERORS MUST RETURN THIS COVER SHEET WITH RFP RESPONSE	

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OFFEROR'S RFP CHECKLIST

The 10 Most Critical Things to Keep in Mind When Responding to an RFP for the State of Montana

1. _____ **Read the entire document.** Note critical items such as: mandatory requirements; supplies/services required; submittal dates; number of copies required for submittal; funding amount and source; contract requirements (i.e., contract performance security, insurance requirements, performance and/or reporting requirements, etc.).
2. _____ **Note the Business & Marketing Manager's name, address, phone numbers and e-mail address.** This is the only person you are allowed to communicate with regarding the RFP and is your source of information for any questions you may have.
3. _____ **Attend the Mandatory Site Tour.** The Site Tour will provide an opportunity to ask clarifying questions, obtain a better understanding of the project, or to notify the Commission of any ambiguities, inconsistencies, or errors in the RFP.
4. _____ **Take advantage of the “question and answer” period.** Submit your questions to the Business & Marketing Manager by the due date listed in the Schedule of Events and view the answers given in the formal “addenda” issued for the RFP. All addenda issued for an RFP are posted on the GSD website and will include all questions asked and answered concerning the RFP.
5. _____ **Follow the format required in the RFP** when preparing your response. Provide point-by-point responses to all sections in a clear and concise manner.
6. _____ **Provide complete answers/descriptions.** Read and answer **all** questions and requirements. Don't assume the Commission or evaluation committee will know what your company capabilities are or what items/services you can provide, even if you have previously contracted with the Commission. The proposals are evaluated based solely on the information and materials provided in your response.
7. _____ **Use the Proposal Form provided (Attachment B).**
8. _____ **Check the GSD website for RFP addenda.** Before submitting your response, check the GSD website at <http://gsd.mt.gov/osbs/Default.asp>, (Agency: Dept. of Commerce) to see whether any addenda were issued for the RFP. If so, you must submit a signed cover sheet for each addendum issued along with your RFP response.
9. _____ **Review and read the RFP document again** to make sure that you have addressed all requirements. Your original response and the requested copies must be identical and be complete. The copies are provided to the evaluation committee members and will be used to score your response.
10. _____ **Submit your response on time.** Note all the dates and times listed in the Schedule of Events and within the document, and be sure to submit all required items on time. Late proposal responses are never accepted. Also, please note that FAX copies will not be accepted.

This checklist is provided for assistance only and should not be submitted with your Proposal.

SCHEDULE OF EVENTS

EVENT

DATE

RFP Issue DateNovember 10, 2008

Mandatory Site Tour....Opera House, Virginia City - 10:30 a.m. November 19, 2008

Deadline for Receipt of Written QuestionsNovember 25, 2008

Deadline for Posting of Written Answers to [GSD Website](http://gsd.mt.gov/osbs/Default.asp)November 28, 2008
<http://gsd.mt.gov/osbs/Default.asp>, (Agency: Dept. of Commerce)

**RFP Response Due DateReceived by 5:00 p.m. Local Time,
December 8, 2008**

Notification of Offeror Interviews (optional)December 10, 2008

Offeror Interviews.....December 15, 2008

Intended Date for Contract AwardDecember 19, 2008

SECTION 1: PROJECT OVERVIEW AND INSTRUCTIONS

1.0 PROJECT OVERVIEW

The Montana Heritage Commission (hereinafter referred to as “the Commission”) invites you to submit a proposal to lease the Virginia City Opera House and operate a summer stock theatre at this location. This facility includes:

- A 244 seat theater
- A rehearsal hall with some living space and storage
- Costume shack with costumes
- Two storage sheds with some tools and sets
- Water/sewer fees are included, Concessionaire is responsible for electric, propane, and solid waste

The Opera House Concessionaire will also be given first preference to rent additional housing for theatre performers and staff. We have six cabins with a common bathhouse available at a cost of \$150 per person per month. Cabins are divided into two or three units each, providing up to 13 beds total. The Commission will hold these cabins until **March 31, 2008**—at this time they will be released for rent to the general public.

Shows must be held a minimum of six days per week, with at least two matinees per week—including at least one matinee on the weekend. The successful bidder must agree to work cooperatively with the concessionaires at the Bale of Hay Saloon to coordinate shared restroom facilities and event schedules.

The minimum term of the contract is three to five years, with a minimum annual lease payment as noted on the Bid Proposal Form (Appendix B). A more complete description of the services sought for this project is provided in Section 3, Scope of Project. Proposals submitted in response to this solicitation must comply with the instructions and procedures contained herein.

The State of Montana owns more than 100 historic buildings in Virginia City and most of the buildings in a composite townsite known as Nevada City. These resources include buildings and their contents currently administered for display purposes only, buildings that are used solely for administrative purposes, a number of residences, and buildings that are used by concessionaires to provide food, lodging, entertainment, and sales items. These resources are administered for the State by the Montana Heritage Preservation and Development Commission—a legislatively authorized state agency. The Commission’s operations are run by an executive director.

Further, the Commission is required to generate revenue and offer a sufficient range of appropriate services, goods, lodging, programs, and experiences on a fee basis to continue daily operation and to care for the buildings, artifacts, and settings that comprise this site.

The Commission works closely with numerous other entities that have a strong stake in the future of these resources: residents and city government of Virginia City, Madison County, Virginia City Chamber of Commerce, nonprofit preservation and educational organizations including the Virginia City Preservation Alliance. Virginia City has 140 year-round residents, and is the seat of county government for Madison County.

1.1 SINGLE POINT OF CONTACT

From the date this Request for Proposal (RFP) is issued until an offeror is selected and the selection is announced by the Business & Marketing Manager, **offerors are not allowed to communicate with any Commission staff or officials regarding this procurement, except at the direction of Karlee Smith, the**

Business & Marketing Manager in charge of the solicitation. Any unauthorized contact may disqualify the offeror from further consideration. Contact information for the single point of contact is as follows:

Business & Marketing Manager: Karlee Smith
Address: 101 Reeder's Alley, Helena, MT 59601
Telephone Number: (406) 449-6522
Fax Number: (406) 449-7081
E-mail Address: karlees@mt.gov

1.2 REQUIRED REVIEW

1.2.1 Review RFP. Offerors should carefully review the instructions, mandatory requirements, specifications, standard terms and conditions, and standard contract set out in this RFP and promptly notify the Business & Marketing Manager identified above in writing or via e-mail of any ambiguity, inconsistency, unduly restrictive specifications, or error which they discover upon examination of this RFP.

1.2.2 Form of Questions. Offerors with questions or requiring clarification or interpretation of any section within this RFP must address these questions in writing or via e-mail to the Business & Marketing Manager referenced above on or before **November 25, 2008**. Each question must provide clear reference to the section, page, and item in question. Questions received after the deadline may not be considered.

1.2.3 Commission's Answers. The Commission will provide an official written answer to all questions received by November 25, 2008. The Commission's response will be by formal written addendum on the websites listed below. Any other form of interpretation, correction, or change to this RFP will not be binding upon the Commission. Any formal written addendum will be posted on the General Services Division's website alongside the posting of the RFP at <http://gsd.mt.gov/osbs/Default.asp>, (Agency: Dept. of Commerce) by the close of business on the date listed. Offerors must sign and return any addendum with their RFP response. Questions and answers will also be posted on the Commission's website at, www.virginiacitymt.com, What's New.

1.2.4 Standard Terms and Conditions/Standard Contract. By submitting a response to this RFP, offeror agrees to acceptance of the standard terms and conditions and standard contract as set out in Appendix A of this RFP. Much of the language included in the standard terms and conditions and standard contract reflects requirements of Montana law. Requests for exceptions to the standard terms and conditions, standard contract terms, or any added provisions must be submitted to the Business & Marketing Manager referenced above by the date for receipt of written/e-mailed questions or with the offeror's RFP response and must be accompanied by an explanation of why the exception is being taken and what specific effect it will have on the offeror's ability to respond to the RFP or perform the contract. The Commission reserves the right to address non-material, minor, insubstantial requests for exceptions with the highest scoring offeror during contract negotiation. Any material, substantive, important exceptions requested and granted to the standard terms and conditions and standard contract language will be addressed in any formal written addendum issued for this RFP and will apply to all offerors submitting a response to this RFP.

1.2.5 Mandatory Requirements. To be eligible for consideration, an offeror **must** meet the intent of all mandatory requirements. The Commission will determine whether an offeror's RFP response complies with the intent of the requirements. RFP responses that do not meet the full intent of all requirements listed in this RFP may be subject to point reductions during the evaluation process or may be deemed non-responsive.

1.3 MANDATORY SITE TOUR

A Mandatory Site Tour will be conducted at The Opera House in Virginia City at 10:30 a.m. on November 19, 2008. A tour of the site is essential for Offerors to fully understand the Facility and be able to

prepare a complete proposal. Offerors may use this opportunity to ask clarifying questions or obtain a better understanding of the project or to notify the Commission of any ambiguity, inconsistency, or error which they may discover upon examination of this RFP. All responses to questions at the Site Tour will be oral and in no way binding on the Commission. Participation in the Site Tour is mandatory. It is required that all interested parties participate.

1.4 SUBMITTING A PROPOSAL

1.4.1 Organization of Proposal. Offerors must organize their proposal into sections that follow the format of the Bid Proposal Form attached. Please submit a point-by-point response to all items in the Bid Proposal Form (Appendix B).

1.4.2 Failure to Comply with Instructions. Offerors failing to comply with these instructions may be subject to point deductions. The Commission may also choose to not evaluate, may deem non-responsive, and/or may disqualify from further consideration any proposals that do not follow this RFP format, are difficult to understand, are difficult to read, or are missing any requested information.

1.4.3 Copies Required and Deadline for Receipt of Proposals. Offerors must submit one original proposal and **five (5)** copies to the **Montana Heritage Commission**. ***Proposals must be received at the office of the Montana Heritage Commission at 101 Reeder's Alley, Helena, MT 59601 prior to 5:00 p.m., local time, December 8, 2008. Facsimile responses to requests for proposals will not be accepted.***

1.4.4 Late Proposals. ***Regardless of cause, late proposals will not be accepted and will automatically be disqualified from further consideration.*** It shall be the offeror's sole risk to assure delivery at the designated office by the designated time. Late proposals will not be opened and may be returned to the offeror at the expense of the offeror or destroyed if requested.

1.5 OFFEROR'S CERTIFICATION

1.5.1 Understanding of Specifications and Requirements. By submitting a response to this RFP, offeror agrees to an understanding of and compliance with the specifications and requirements described in this RFP.

1.5.2 Offeror's Signature. The proposals must be signed in ink by an individual authorized to legally bind the business submitting the proposal. The offeror's signature on a proposal in response to this RFP guarantees that the prices quoted have been established without collusion and without effort to preclude the State of Montana from obtaining the best possible supply or service. Proof of authority of the person signing the RFP response must be furnished upon request.

1.5.3 Offer in Effect for 120 Days. A proposal may not be modified, withdrawn or canceled by the offeror for a 120-day period following the deadline for proposal submission as defined in the Schedule of Events, or receipt of best and final offer, if required, and offeror so agrees in submitting the proposal.

1.6 COST OF PREPARING A PROPOSAL

1.6.1 Commission Not Responsible for Preparation Costs. The costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the Commission are entirely the responsibility of the offeror. The Commission is not liable for any expense incurred by the offeror in the preparation and presentation of their proposal.

1.6.2 All Timely Submitted Materials Become Commission Property. All materials submitted in response to this RFP become the property of the Commission and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the Commission and offeror resulting from this RFP process.

SECTION 2: RFP STANDARD INFORMATION

2.0 AUTHORITY

This RFP is issued under the authority of section 18-4-304, MCA (Montana Code Annotated) and ARM 2.5.602 (Administrative Rules of Montana). The RFP process is a procurement option allowing the award to be based on stated evaluation criteria. The RFP states the relative importance of all evaluation criteria. No other evaluation criteria, other than as outlined in the RFP, will be used.

2.1 OFFEROR COMPETITION

The Commission encourages free and open competition among offerors. Whenever possible, the Commission will design specifications, proposal requests, and conditions to accomplish this objective, consistent with the necessity to satisfy the Commission's need to procure technically sound, cost-effective services and supplies.

2.2 RECEIPT OF PROPOSALS AND PUBLIC INSPECTION

2.2.1 Public Information. All information received in response to this RFP, including copyrighted material, is deemed public information and will be made available for public viewing and copying shortly after the time for receipt of proposals has passed with the following four exceptions: (1) bona fide trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA, that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by the Commission; (3) any company financial information requested by the Commission to determine vendor responsibility, unless prior written consent has been given by the offeror as set out in section 18-4-308, MCA; and (4) other constitutional protections. See Mont. Code Ann. § 18-4-304.

2.2.2 Business & Marketing Manager Review of Proposals. Upon opening the proposals received in response to this RFP, the Business & Marketing Manager in charge of the solicitation will review the proposals and separate out any information that meets the referenced exceptions in Section 2.2.1 above, providing the following conditions have been met:

- Confidential information is clearly marked and separated from the rest of the proposal.
- The proposal does not contain confidential material in the cost or price section.
- An affidavit from an offeror's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to each proposal containing trade secrets. Counsel must use the State of Montana "Trade Secret Confidentiality Affidavit" form in requesting the trade secret claim. This affidavit form is available on the General Services Division's website at: <http://gsd.mt.gov/procurement/forms.asp> or by calling (406) 444-2575.

Information separated out under this process will be available for review only by the Business & Marketing Manager, the evaluation committee members, and limited other designees. Offerors must be prepared to pay all legal costs and fees associated with defending a claim for confidentiality in the event of a "right to know" (open records) request from another party.

2.3 CLASSIFICATION AND EVALUATION OF PROPOSALS

2.3.1 Initial Classification of Proposals as Responsive or Nonresponsive. All proposals will initially be classified as either “responsive” or “nonresponsive.” Proposals may be found nonresponsive any time during the evaluation process or contract negotiation if any of the required information is not provided; the submitted price is found to be excessive or inadequate as measured by criteria stated in the RFP; or the proposal is not within the plans and specifications described and required in the RFP. If a proposal is found to be nonresponsive, it will not be considered further.

2.3.2 Evaluation of Proposals. The evaluation committee will evaluate the remaining proposals and recommend whether to award the contract to the highest scoring offeror or, if necessary, to seek discussion/negotiation or a best and final offer in order to determine the highest scoring offeror. All responsive proposals will be evaluated based on stated evaluation criteria. In scoring against stated criteria, the Commission may consider such factors as accepted industry standards and a comparative evaluation of all other qualified RFP responses in terms of differing price, quality, and contractual factors. These scores will be used to determine the most advantageous offering to the Commission.

2.3.3 Best and Final Offer. The “Best and Final Offer” is an option available to the Commission under the RFP process which permits the Commission to request a “best and final offer” from one or more offerors if additional information is required to make a final decision. Offerors may be contacted asking that they submit their “best and final offer,” which must include any and all discussed and/or negotiated changes. The Commission reserves the right to request a “best and final offer” for this RFP, if any, based on price/cost alone.

2.3.4 Evaluation Committee Recommendation for Contract Award. The evaluation committee will provide a written recommendation for contract award to the Business & Marketing Manager that contains the scores, justification and rationale for its decision. The Business & Marketing Manager will review the recommendation to ensure its compliance with the RFP process and criteria before concurring in the evaluation committee’s recommendation.

2.3.5 Request for Documents Notice. Upon concurrence with the evaluation committee’s recommendation for contract award, the Business & Marketing Manager will issue a Notice of Award Letter to the highest scoring offeror requesting the required insurance documents, and any other necessary documents. Receipt of the Notice of Award Letter does not constitute a contract and no work may begin until a contract signed by all parties is in place. The Business & Marketing Manager’s notification to all other offerors of the Commission’s intent to begin contract negotiation with the highest scoring offeror does not cancel any other offers until such time that a contract has been fully executed by the parties and the written notification is given of such.

2.3.6 Contract Negotiation. Upon issuance of the Notice of Award Letter, the Business & Marketing Manager and/or state agency representatives may begin contract negotiation with the responsive and responsible offeror whose proposal achieves the highest score and is, therefore, the most advantageous to the Commission. If contract negotiation is unsuccessful or the highest scoring offeror fails to provide necessary documents or information in a timely manner, or fails to negotiate in good faith, the Commission may terminate negotiations and begin negotiations with the next highest scoring offeror.

2.3.7 Contract Award. Contract award, if any, will be made to the highest scoring offeror who provides all required documents and successfully completes contract negotiation. A formal contract utilizing the Standard Contract attached as Appendix A will be executed by all parties.

2.2 COMMISSION'S RIGHTS RESERVED

While the Commission has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the Commission to award and execute a contract. Upon a determination such actions would be in its best interest, the Commission, in its sole discretion, reserves the right to:

- cancel or terminate this RFP (Mont. Code Ann. § 18-4-307, MCA);
- reject any or all proposals received in response to this RFP (ARM 2.5.602);
- waive any undesirable, inconsequential, or inconsistent provisions of this RFP which would not have significant impact on any proposal (ARM 2.5.505);
- not award if it is in the best interest of the Commission not to proceed with contract execution (ARM 2.5.602); or

SECTION 3: SCOPE OF PROJECT

The Montana Heritage Commission is seeking proposals to lease and manage a summer stock theatre in Virginia City, Montana at the Opera House. The 2009 season marks the 60th year the theatre has been in operation. Each day's production has consisted of a 19th century melodrama (about 1 hour in length) followed by a vaudeville style variety show. We are seeking creativity and initiative, and will be looking for expressions of such in your proposal.

The concessionaire will be provided use of the 240+ seat Opera House, shared use of the restrooms with the Bale of Hay Saloon, a costume shack, rehearsal hall with living space, and two storage sheds. The concessionaire will also be provided first option to rent additional housing for theater performers and staff. Some props, costumes and sheet music are available for use by the new concessionaire. Negotiation for purchase of other props, costumes, and ticketing software/equipment may be possible from the previous concessionaire. The concessionaire will have use of the trade names, Virginia City Opera House and Virginia City Players. These names are registered with the Montana Secretary of State's office under Montana Heritage Preservation and Development Commission. The previous concessionaire owns domain names, www.virginiacityplayers.com and www.vcplayers.com. The new concessionaire has the option of negotiating purchase and transfer of these domain names.

The Opera House facility includes a 1910 Cremona Photoplayer—a one-man band instrument—an air-driven organ, with a complicated mix of horns, strings and percussion originally made to accompany silent movies. This rare instrument is one of only two Cremonas available for public viewing in the world. Because of the rarity and fragility of this instrument the Commission requires that the Concessionaire hire a qualified musician who is familiar with this instrument and who has the knowledge and ability to make necessary repairs should there be malfunctions during the season. We have secured Dave Calendine for this purpose for the 2009 season at \$550 per week from May 18 through mid-September (hire of musician/repair person for seasons beyond 2009 must be approved by the Commission). The Commission agrees to pay \$100/week of Dave's salary to cover Cremona repairs. The remaining \$450/week should be included as an expense in your proposal under proposed income/expense statement. Dave also has ideas about adding shows just for the Cremona that could increase revenues for the Concessionaire as well. For more information about Dave's credentials visit <http://www.calendine.net/>.

Tickets currently sell for \$15 per person, \$12 for children. The past concessionaire also produced income from the sale of popcorn, t-shirts, commemorative programs, sponsorships, and other Opera House merchandise. The annual gross income over the past ten years has ranged from \$100,000 to \$146,500.

An electronic ticketing system is highly recommended to allow for online reservations and payment. Please provide details about how your tickets will be sold, system to be used, tracking and financial accounting plans.

The following is a list of other items to consider when preparing your proposal:

- The season runs from Memorial Day through Labor Day. However, the successful concessionaire is welcome to experiment with an abbreviated or smaller-cast production in May, September and October.
- The play currently begins at 7:00 pm Tuesday-Saturday, with matinees at 4:00 pm on Saturdays and Sundays. The 7:00 p.m. starting time is required to allow regional visitors time to travel back home after the play and arrive before midnight. Also, regular music events at the Bale of Hay Saloon next door are more easily accommodated if the play starts and ends earlier in the evening.
- Authentic 19th century productions are preferred. Exceptions may be considered with approval by the Executive Director of the Commission. The concessionaire will be required to provide the Executive Director with a list of the next year's plays by Dec. 1 of the preceding year. Due to the timing of this RFP, the list of plays for the 2009 season is requested by February 1, 2009.
- Offers have the option of running more than one play simultaneously on alternating nights. This might encourage an overnight stay for visitors who want to see more than one play. The previous concessionaire offered three different plays in repertory fashion. Please discuss plays and presentation in your proposal.
- The Opera House is for family entertainment. Sexual content and off-color language will be avoided.

SECTION 4: OFFEROR QUALIFICATIONS

The Montana Heritage Commission (Commission) is seeking a minimum as noted on the Bid Proposal Form (Appendix B) for the lease and operation of the Opera House in Virginia City, Montana. Payment will be made in four equal monthly payments from June through September of each year, due on the 1st day of each month.

- 4.0 The Commission may make such investigations as deemed necessary to determine the ability of the offeror to supply the products and perform the services specified.
- 4.1 The Commission reserves the right to reject any proposal if the evidence submitted by, or investigation of, the offeror fails to satisfy the Commission that the offeror is properly qualified to carry out the obligations of the contract.

SECTION 5: PROPOSALS

In determining the capabilities of an offeror to perform the services specified herein, the informational requirements as listed on the Bid Proposal Form (Appendix B) must be met by the offeror and will be weighed by the Commission. **Note: Each item must be thoroughly addressed. Failure to respond to any requirements listed in this Section may disqualify the proposal**

Individuals, firms, or grouped combinations of firms and individuals submitting a proposal for this RFP are required to provide responses to all items on the Bid Proposal Form (Appendix B).

Important note:

The Commission values realism and honesty in this material. It does not anticipate contract renegotiations once the contract is let, based on misunderstandings about management of the business.

SECTION 6: EVALUATION CRITERIA

The evaluation committee will review and evaluate the offers according to the following criteria. Points will be awarded up to the maximum number listed. See Bid Proposal Form (Appendix B) for details about each criteria.

Business and theatre background	30 Points	Fit with historic themes	10 Points
Business philosophy	10 Points	Hours of operation and season	10 Points
Business & marketing plan, including expanding production	10 Points	Lease fee, Division of Proceeds, and annual increase offered	25 Points
Business & credit references	15 Points	Maintenance plan	10 Points
Cooperation	10 Points	Products/goods/services	5 Points
		TOTAL POSSIBLE	135 Points

SECTION 7: STANDARD CONTRACT INFORMATION

The successful bidder(s) will abide by all requirements of the contract (Attachment A). Items listed below include some of the standard contract obligations we wish to highlight:

- Provide liability, casualty, and fire insurance as required by contract.
- Provide a complete accounting of all financial activity at the end of the season. Ticket sales shall be reported monthly when lease payments are submitted.
- Pay for all utilities needed to operate their facilities, including off-season rates.
- Obtain state and local licenses and permits required to operate their facilities or provide services.
- Pay opening and closing expenses associated with all facilities or services.
- Provide all supplies and materials necessary to operate their businesses.
- Agree to make necessary routine repairs and perform basic maintenance for all facilities.
- Agree to an audit of the books of the concessionaire at the Commission's expense at any reasonable time and place.
- Maintain the environs of their facilities, including but not limited to the boardwalk, grass and weed mowing, litter pick-up and removal, garbage removal, and window cleaning. All materials must be stored inside and out of view of the visiting public.
- Provide and maintain outdoor flower boxes at the entry to their facilities.
- Agree that no possessory interests are granted to successful bidders.

7.0 STANDARD CONTRACT

The Commission's standard contract is attached to this document as Appendix A. Offerors should notify the Commission of any terms within the standard contract that either preclude them from responding to the RFP or add unnecessary cost. This notification must be made by the deadline for receipt of written/e-mailed questions or with the offeror's RFP response. Any requests for material, substantive, important exceptions to the standard contract will be addressed in any formal written addendum issued by the Business & Marketing Manager in charge of the solicitation. The Commission reserves the right to address any non-material, minor, insubstantial exceptions to the standard contract with the highest scoring offeror at the time of contract negotiation.

7.1 ADDITIONAL CONTRACT PROVISIONS AND TERMS

This RFP and any addenda, the offeror's RFP response, including any amendments, a best and final offer, any clarification question responses, and any negotiations shall be included in any resulting contract. The Commission's standard contract, attached as Appendix A, contains the contract terms and conditions which will form the basis of any contract negotiated between the Commission and the highest scoring offeror. The contract language contained in Appendix A does not define the total extent of the contract language that may be negotiated. In the event of a dispute as to the duties and responsibilities of the parties under this contract, the contract, along with any attachments prepared by the Commission, will govern in the same order of precedence as listed in the contract.

The following additional provisions will be included in the attached contract:

- 19th century melodrama productions are preferred. Exceptions may be considered with approval by the Commission's Executive Director. The concessionaire will be required to provide the Commission with a list of the next year's plays by Dec. 1 of the preceding year. Due to the timing of this RFP, the list of plays for the 2009 season is requested by February 1, 2009.
- No alcoholic beverages are to be used and or consumed during or as part of a performance.
- The Opera House is for family entertainment. Sexual content and off-color language shall be avoided.
- No trailers or other large items may be stored on Commission property without the Commission's Virginia City Site Manager's written permission.

APPENDIX A: STANDARD CONTRACT

MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION LEASE AND MANAGEMENT SERVICES CONTRACT

[NAME OF CONCESSIONAIRE]

This Lease and Management Services Contract ("Contract") is made and entered into this ____ day of _____, 2008 by and between _____ ("Concessionaire"), _____, and the Montana Heritage Preservation and Development Commission ("Commission"), created pursuant to Sections 22-3-1001, *et seq.*, Montana Code Annotated ("MCA"), and whose principal office is located at 101 Reeder's Alley, Helena, Montana 59601.

WHEREAS, in Section 22-3-1001, MCA, the Montana Legislature authorized the Commission to acquire and manage properties that possess outstanding historical value, display exceptional qualities worth preserving, are genuinely representative of the state's culture and history, and demonstrate the ability to become economically self-supporting;

WHEREAS, the Commission may contract with private organizations to carry out these purposes (Section 22-3-1003, MCA); and

WHEREAS, Concessionaire desires to lease and manage the facility known as the _____, as more particularly described in **Section III (A)** of this Contract (the "Facility").

NOW THEREFORE, in consideration of the mutual covenants described Contract herein, the parties agree as follows:

I. PURPOSE. The purpose of this Contract is to lease the Facility to Concessionaire to use, occupy, operate, and manage in accordance with the terms herein and commensurate with the purposes described in Section 22-3-1001, MCA, while using its best efforts and operating in good faith to make the Facility economically self-supporting. Concessionaire agrees to operate a _____.

II. TERM. This Contract shall take effect on _____ and terminate on _____, unless terminated earlier in accordance with the terms of this Contract.

III. LEASE OF PREMISES. The Commission leases the Facility to the Concessionaire on the following terms:

A. Description of Property. The premises leased to the Concessionaire is known as the _____, referred to in this Contract as the "Facility," located on the real property legally described as _____, Virginia City, Montana,, with a street address of at _____, Montana.

B. Rent. For the use, occupancy, operation, and management of the Facility during the term of this Contract, the Concessionaire shall pay an annual rent of _____, to be paid _____ due to the Commission or its authorized representative on or before the _____.

C. Adjustment of Rent. The Commission shall perform an annual review of inflation rates and, if warranted, make a cost of living adjustment (COLA) each February for the duration of this Contract. After each annual review, rent for the Facility shall increase the following operating season by the COLA percentage ascertained during this review. Concessionaire will be notified in writing of the new rental rate by February 1st each year. [NOTE: This section may be replaced with RFP Offeror's response to item #7 on the Bid Proposal Form—Percentage increase you are willing to pay each subsequent year of the agreement.]

D. Refundable Cleaning and Damage Deposit. Concessionaire shall also pay to the Commission by May 15, _____ a refundable cleaning and damage deposit in the amount of \$ _____. This deposit may be used by the Commission at any time during the term of this Contract to repair damage and/or clean the Facility, as deemed appropriate by the Commission to preserve the qualities or value of the Facility. Upon written notification from the Commission, the Concessionaire shall pay such sums necessary to maintain the \$ _____ balance in the deposit within 10 days of receipt of written notice. Any remainder of the deposit that has not been used during the term of this Contract shall be returned to the Concessionaire upon termination so long as the Concessionaire has received an end-of-season release as described in Section III (P).

E. Late Fees. Concessionaire agrees to pay a 5% late fee on any rent, deposit, or other amount due to the Commission pursuant to this Contract that is delinquent more than ten (10) days.

F. Payment of Utilities and Other Services. Commission agrees to pay for water, sewer, and trash removal (solid waste) fees for normal and ordinary use, occupancy, operation, and management of the Facility as a retail store. Concessionaire shall pay for any and all other utilities, including, without limitation, lighting, heating, power, communication, and other utilities and services associated with the use, occupancy, operation, and management of the Facility during the term of this Contract, including any period during the term of this Contract when the Facility is closed or otherwise not operating. Concessionaire agrees to contact Northwestern Energy upon signing of this Contract to have the power transferred to Concessionaire's name. During any negotiations for renewal of this Contract, Concessionaire shall be responsible for specified utility costs associated with use, operation, occupancy, and management of the Facility from termination date of this Contract until a new Contract is signed.

G. Use Restrictions. The Concessionaire shall use, occupy, operate, and manage the Facility in a manner that furthers the purposes of this Contract and does not adversely affect the qualities or value of the Facility. Prohibited uses of the Facility include, but are not limited to, the following: (i) maintenance and repair except as specifically authorized in or pursuant to **Section III (I)** of this Contract; (ii) any activity that would detract from, inhibit, or corrupt the historical value or purposes of the Facility ; (iii) dumping, storage, or disposal of any waste, hazardous materials, or other federal- or state-controlled objects or substances of any kind; (iv) use of firearms or explosives without the prior written approval of the Commission; (v) grading, filling, excavation, or removal of any sand, gravel, minerals or other natural deposits or materials; (vi) use of any open flame device, container, or apparatus, including but not limited to candles, kerosene lanterns, or other similar objects; and (vii) smoking of cigarettes, cigars, or pipes; (viii) political or similar promotional signs may not be posted anywhere on the premises of the Facility; (ix) no gambling shall be permitted in or at the Facility.

Concessionaire shall take all reasonable precautions to prevent waste or damage to the Facility, furnishings, and fixtures.

H. Compliance with Laws, Obtaining State and Local Licenses, Taxes. The Concessionaire shall, at Concessionaire's expense, comply with any and all local, state, and federal laws, ordinances, rules, regulations, requirements, and orders applicable to the use, occupancy, operation, or management of the Facility. Concessionaire agrees to obtain all state and local licenses and permits required to use, occupy, operate, or manage the Facility. Concessionaire agrees to pay all taxes associated with using, occupying, operating, and managing the Facility, including, but not limited to, the resort tax, the accommodations tax, the beneficial use tax, and all taxes related to employment of individuals.

I. Basic Maintenance and Repair. Concessionaire shall perform all basic maintenance and repairs of the Facility at the Concessionaire's sole expense, and keep the Facility in as good condition as when received. Concessionaire is responsible for all basic repairs and maintenance necessary to maintain the health and safety of persons using the Facility, including but not limited to the maintenance of all lighting, plumbing, heating, and emergency lighting. Exit signs and emergency lighting shall remain lighted and functional at all times when the business is operating. Burned-out light bulbs must be replaced immediately at the Concessionaire's sole expense. Concessionaire shall maintain fully operational smoke detectors and fire extinguishers necessary to protect the Facility and the safety and well-being of the patrons or guests.

Concessionaire shall keep the Facility in a clean condition throughout the term of this Contract. Concessionaire shall maintain a clean boardwalk, mow grass and control weeds, pick up and remove litter and garbage, and clean all windows of the Facility. Concessionaire shall provide and maintain outdoor seasonal flower boxes at the entry to the Facility at all times during the operating season.

No abatement, diminution, or reduction of rent shall be claimed or allowed to the Concessionaire for inconvenience, discomfort, interruption of business, or otherwise, arising from the basic maintenance or repair of the Facility.

J. Capital Improvements. No capital maintenance, repairs, structural modifications, alterations, or improvements to, the Facility may be made without the prior written approval of the Commission. Concessionaire agrees to cooperate in good faith with the Commission to formulate a plan for major restoration, rehabilitation, and maintenance of the Facility, including the provision of major capital improvements. The parties agree to apportion costs and duties of major restoration, rehabilitation, and improvements in a manner and in amounts to be agreed upon in a separate writing to be executed at some future time during the term of this Contract. Such a plan or Contract shall not and does not relieve the Concessionaire of the basic duties to repair and maintain the Facility as described in this Contract.

No abatement, diminution, or reduction of rent shall be claimed or allowed to the Concessionaire for inconvenience, discomfort, interruption of business, or otherwise, arising from any major restoration, rehabilitation, or improvements to the Facility.

K. Maintenance Affecting Historic Nature. All maintenance, repairs, restoration, rehabilitation, and improvements of the Facility shall be in accordance with the purpose of this Contract to maintain and preserve the historic value and quality of the Facility. No maintenance or repair of any kind affecting the historic value, character, or nature of the Facility, furnishings, or fixtures may be done without the prior written approval of the Commission. All maintenance and repairs must be done in accordance with any and all applicable guidelines developed by Montana Heritage Commission, the National Park Service of the United States Department of Interior, the Montana Historical Society, and the Montana Department of Fish, Wildlife and Parks. The Commission, at its sole discretion, may determine and impose other maintenance and repair restrictions, including internal and external paint colors and signs, at any time during the term of this Contract.

L. Protection of Property and Persons, Liability for Negligence. All furnishings, artifacts, and other personal property items associated with the Facility that are owned and managed by the Commission are listed in **Attachment A** and specifically incorporated herein by this reference. The Commission reserves the right to remove or replace any item listed in **Attachment A**, and shall retain ownership and control over all such items upon termination of this Contract.

Concessionaire agrees to use all reasonable efforts to maintain, protect, and preserve the health and safety of persons using the Facility, and the safety, well-being, and historical value of the items listed in **Attachment A** and any other property associated with the Facility. Concessionaire shall not make any permanent attachments or changes to the Facility without prior written approval of Commission. Concessionaire shall be liable for any and all damages arising from any negligent or intentional acts of the Concessionaire, its agents, employees, representatives, assigns, or subcontractors in failing to protect persons

using the Facility and in failing to protect the Facility, including its building, artifacts, display items, furnishings, wall coverings, or fixtures from theft, destruction, defacement, or other harm. Concessionaire and its employees shall attend an annual training session on how to move historic collection pieces and how to clean them so there is minimal damage. The Commission shall provide Concessionaire and staff with an annual certification after completion of training.

Concessionaire agrees to maintain a current binder of Material Safety Data Sheets. Concessionaire agrees to provide Commission staff with a list of any hazardous or toxic chemicals stored in Facility. Commission will then provide copies of pertinent Material Safety Data Sheets to Concessionaire for inclusion in Concessionaire's binder. Concessionaire also agrees to prepare a written Emergency Plan for the Facility in compliance with OSHA's Emergency Action Plan standards set forth in 29 C.F.R. 1910.38, or must communicate the action plan orally if fewer than 10 employees work at the Facility. The Material Safety Data Sheets and Emergency Plan shall be prominently displayed for employees and emergency crews.

M. Fixtures, Improvements, Alterations, Additions. Unless agreed to in writing by the parties, any and all installations, improvements, alterations, or additions, including but not limited to ceiling fixtures, flooring, carpeting, rugs, shelving, partitions, and wall coverings, whether preexisting or added during the term of this Contract, are and shall be the sole property of the Commission unless both parties agree in writing prior to such installation, improvement, alteration, or addition. The Commission shall retain ownership and control over all such items upon termination of this Contract. If, at the termination of this Contract, Concessionaire wishes to remove any furnishings that the parties previously agree belong to Concessionaire, and can do so without injury of any kind or nature to the Facility, Concessionaire may remove them on or before the last day of the term of occupancy.

N. Commission Access. Concessionaire agrees that the Commission shall have the unrestricted right to enter and inspect the Facility upon with 24-hour notice.

O. Assignment and Sublease. Concessionaire shall not assign, transfer, sublease, or subcontract, any portion of the Contract without the express written consent of the Commission.

P. Annual Inspection and End-of-Season Release. The Commission shall inspect the Facility at the end of each season during the term of this Contract and at the termination of this Contract. If the Commission determines, in its sole discretion, that the Facility has not been adequately cleaned, repaired, or winterized as described in **Section IV(C)**, then the Concessionaire shall be charged the cost of cleaning, repairing, or winterizing.

IV. MANAGEMENT OF PREMISES

A. General Management Duties. Concessionaire shall manage the daily operation of the Facility from May 15 through September 15 of each year during the term of this Contract. The Concessionaire shall

manage and operate the Facility in accordance with the representations made in the proposal submitted by the Concessionaire to the Commission in _____, attached hereto as **Attachment B** and specifically incorporated herein by this reference. The management and operation of the Facility shall be performed by Concessionaire in a manner that preserves and protects the historical value of the Facility, while furthering the profitable operation of the Facility. Concessionaire shall obtain the prior written approval from the Commission to conduct any special activity or event at the Facility, or other matter that may affect the status, protection, or preservation of the Facility and surrounding properties.

B. Employees. Concessionaire is solely responsible for hiring and supervising all personnel necessary to manage and operate the Facility. Concessionaire understands and agrees that any such personnel are employees of the Concessionaire and are not employees of the Commission or the State of Montana. Concessionaire is responsible for compliance with all employment and labor laws that pertain to personnel.

Concessionaire shall maintain valid and current Workers' Compensation Insurance or an Independent Contractor's Exemption covering the Concessionaire in accordance with §§ 39-71-401, 39-71-405, and 39-71-417, MCA.

C. Opening and Closing of Facility. Concessionaire is responsible for opening the Facility Memorial Day weekend of each year during the term of this Contract and making the Facility operational. Concessionaire is also responsible for closing and winterizing the Facility in mid-September, if it is closed during the winter, in accordance with procedures established by the Commission and as set forth in this Contract. Winterizing the Facility includes but is not limited to: i) contacting the Town of Virginia City to change billing to off-season rates, ii) turning off all water sources, iii) draining all water pipes, iv) turning off, then draining water heaters, v) opening faucets, vi) flush toilets and dip all water out of flush tanks, vii) placing anti-freeze (pink MARINE only, not green Prestone-type) in drains, viii) close all window coverings to protect inventories from sunlight, ix) turn off all power sources, x) removal or secure storage of all perishable foods; xi) prop refrigerators and coolers open; xii) secure all doors and windows.

D. Operating Costs. Concessionaire shall timely pay all costs associated with using, occupying, operating, and managing the Facility. The Commission shall not be responsible for any costs associated with use, occupancy, operation, or management of the Facility, unless otherwise specifically provided for in this Contract.

E. Hours of Operation. Concessionaire agrees to open and to operate the Facility to the public seven days each week for at least eight hours per day from Memorial Day through Labor Day and to consistently maintain the business hours posted or advertised for the Facility. The Commission encourages Concessionaire to extend operating hours to the spring and fall shoulder seasons, and to participate in the Christmas Socials events if possible.

F. Bookkeeping and Reporting Requirements -- Audits. Concessionaire shall maintain accurate and complete books that reflect all transactions related to the use, occupation, operation, and management of the Facility. All money received by the Concessionaire in the use, occupation, operation, and management of the Facility shall be completely and accurately reported. At the end of each season, Concessionaire shall provide the Commission with resort tax reports.

Concessionaire agrees that the Commission and the legislative auditor shall have the right and opportunity to audit the books of the Concessionaire at the state's expense after reasonable notice. The cost of such audit shall be borne by the Commission except in such an event that the reports filed by the Concessionaire are in deviation with the audit by more than two percent (2%). In such cases, the Concessionaire shall be solely responsible for the cost of the audit.

G. Participation in Tourism Events and Marketing. Concessionaire agrees to actively market the Facility to potential visitors. Commission encourages Concessionaire to join the Virginia City Area Chamber of Commerce and encourages active participation in Chamber activities. The Commission also encourages Concessionaire to become involved with Gold West Country and their promotional activities.

V. ACCESS TO AND RETENTION OF RECORDS. Concessionaire agrees to provide the Commission and Montana Legislative Auditor, or their authorized agents, access to any records necessary to determine compliance with this Contract. The Grantee agrees to create and retain records supporting the services rendered or supplies delivered for a period of three (3) years after either the completion date of the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the State of Montana or third party, whichever is later. These records will be kept in the Concessionaire's office in Virginia City, Montana.

VI. COMPLIANCE WITH LAWS. Concessionaire must, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any assignment, transfer, or subletting or subcontracting by the Concessionaire subjects assignees, transferees, or subleasees, or subcontractors to the same provision. In accordance with Section 49-3-207, MCA, Concessionaire agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Contract.

VII. AVOIDANCE OF CONFLICT OF INTEREST. Concessionaire will comply with Sections 2-2-201, MCA regarding the avoidance of conflict of interest.

VIII. OWNERSHIP AND PUBLICATION OF MATERIALS. All reports, information, data, and other materials prepared by Concessionaire, or any of its contractors or subcontractors, in furtherance of this Contract are the property of the Concessionaire and the Commission, which both have the royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, in whole or part, such property and any information relating thereto. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the Commission and the Concessionaire.

IX. DEBARMENT. Concessionaire certifies and agrees to ensure during the term of this Contract that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any governmental department or agency. If the Concessionaire cannot certify this statement, it has attached a written explanation for review by the Commission.

X. CONTRACT AMENDMENT. Except as otherwise set forth herein, this Contract may not be enlarged, modified, or altered except upon written agreement by all parties to the Contract.

XI. TERMINATION OF CONTRACT. This Contract may be terminated as follows:

A. Termination for Cause with Notice to Cure Requirement. The Commission may terminate this Contract for the failure of the Concessionaire, its assignees, transferees, subleasees, or subcontractors to perform or comply with any of the services, duties, terms, or conditions contained in this Contract after giving the Concessionaire written notice of the stated failure. The written notice will demand performance of the stated failure within a specified period of time of not less than ten (10) days, or immediately if public health and safety so requires. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

B. Termination upon Specified Events. The Commission may terminate this Contract immediately upon written notice for any of the following limited circumstances:

1. The Concessionaire vacates the Facility or fails to open or operate the Facility for longer than a 24-hour period without obtaining the prior written approval of the Commission;
2. The Commission receives credible information that the Concessionaire or its principal, agent, employee, representative, assign, or subcontractor has embezzled operational proceeds; or

3. The Commission receives credible information that the Concessionaire or its agent, employee, representative, assign, or subcontractor has engaged, is engaging, or intends to engage in any unlawful practice.
4. The Commission or the Legislature sells the Facility, or material changes to the Facility are caused by any of the events set forth in **Section XVI(A)**.

C. Termination Without Cause. The Commission may terminate this Contract at any time without cause 21 days after providing written notice to the Concessionaire. The Concessionaire may terminate this Contract without cause only between Labor Day of any year and January 31st of the following year by providing written notice to the Commission. The Concessionaire may not terminate this Contract from February 1st to Labor Day of any year.

D. Effect of Termination by Default or Termination– Termination Fee. In the event of termination by either party, any and all remaining rent due for the current operating season shall become immediately due and payable. Concessionaire must pay a termination fee of \$500 to cover reasonable costs for the loss of business and finding a replacement for the Concessionaire. Concessionaire shall immediately lose all rights and interests in and under this Contract, and shall be prohibited from any use, occupation, operation, or management of the Facility. Concessionaire agrees to remove any personal property and improvements made to Commission property that the parties previously agree belong to Concessionaire, within thirty (30) days of termination of this Contract. If Concessionaire fails to remove property by this deadline, Concessionaire agrees that such property and improvements shall be considered abandoned and shall become the property of the Commission.

XII. REMEDIES. If the Commission, in its sole discretion, deems Concessionaire in default of this Contract, and Concessionaire has failed to cure the default within the time provided herein, Concessionaire shall surrender any right to possession, use, occupation, operation, or management of the Facility and the Commission may seek any other remedies available in law or in equity, or both. All of the Commission's remedies are cumulative. In assessing money damages for Concessionaire inhibiting, obstructing, or impairing in any manner the use, occupation, operation, or management of the Facility, the parties agree that the usual rules of damages apply, including but not limited to consideration of loss of receipts, reduction in sales of goods, and any other loss with respect to revenue generating services. On termination for cause, the Commission may recover from the Concessionaire any and all damages proximately resulting from the default, including, but not limited to, the cost of recovering the Facility and the value of the balance of this Contract, which sum shall be immediately due from the Concessionaire. In assessing money damages for any failure to preserve or protect the Facility or for any injury to the Facility, the parties agree that in addition to the cost of

restoration and other damages, the loss of historical value, cultural value, ecological, scientific, natural, and aesthetic values shall also be taken into account.

XIII. RENEWAL. This Contract is not subject to automatic renewal at expiration or termination. Renewal of this Contract is solely within the discretion of the Commission.

XIV. HOLD HARMLESS AND INDEMNIFICATION. The Concessionaire agrees to protect, defend, and save the Commission and the State of Montana, their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the court costs and attorneys' fees in defense thereof, arising in favor of the Concessionaire's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Concessionaire and/or its officers, agents, employees, representatives, assigns, or subcontractors, except the sole negligence of the State, under this Contract.

XV. INSURANCE

A. General Requirements. The Concessionaire shall maintain for the duration of this Contract, at its cost and expense, primary liability insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the duties and obligations in this Contract by the Concessionaire, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

B. Primary Insurance. The Concessionaire's insurance coverage shall be primary insurance with respect to the Commission, the State of Montana, their elected or appointed officers, officials, employees, or volunteers. The State's insurance coverage is excess to the Concessionaire's insurance coverage and shall not contribute with it.

C. General Liability Insurance. The Concessionaire shall purchase and maintain Commercial General Liability (Occurrence coverage), to include bodily injury, personal injury, and property damage, with combined single limits of \$1,000,000 per occurrence and \$2,000,000 per aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Concessionaire or its officers, agents, employees, representatives, assigns, or subcontractors. The State, the Commission, and their officers, officials, employees, and volunteers are to be covered and listed as additional insured's; for liability arising out of activities performed by or on behalf of the Concessionaire, including the insured's general supervision of the Concessionaire; products and completed operations; premises owned, leased, occupied, or used.

D. Fire and Casualty Insurance for the Facility. The Commission shall purchase and maintain at all times during the term of this Contract, at the Commission's sole expense, fire and hazard insurance for the Facility, including the structure, all items described on **Attachment A**, and any other Commission property located in or at the Facility. A copy of such insurance coverage shall be provided to the Concessionaire upon request.

E. Fire and Casualty Insurance for Concessionaire's Personal Property. The Concessionaire shall purchase and maintain at all times during the term of this Contract, at Concessionaire's sole expense, fire and hazard insurance for all of the Concessionaire's personal property located in or at the Facility. The State, the Commission, and their officers, officials, employees, and volunteers are to be covered and listed as additional insured's for personal property owned, leased, occupied, or used.

F. General Provisions. All insurance coverage shall be placed with a carrier licensed to do business in the state of Montana with a Best's rating of at least A-. All certificates and endorsements are to be received by the Commission prior to beginning any use, occupancy, operation, or management of the Facility under this Contract. The Concessionaire shall notify the Commission immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The Commission reserves the right to request complete copies of the Concessionaire's insurance policy at any time, including endorsements.

XVI. MISCELLANEOUS.

A. Force Majeure. Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

B. Separability. A declaration by any court, or any other binding legal forum, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.

C. No Arbitration. Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that would arise under the Contract.

D. Integration. This Contract and any attachments hereto contain the entire agreement between the parties, and no statements, promises, or inducements of any kind made by either party, or the agents of either party, not contained herein or in a properly executed amendment hereto are valid or binding.

E. Jurisdiction and Venue. This Contract is governed by the laws of Montana. The parties agree that any litigation concerning this Contract must be brought in the First Judicial District in and for the County

of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees except as otherwise specifically provided for herein.

F. Notices. Any written notices, demands, or other communication required under this Contract shall be delivered (i) in person; (ii) by certified mail, postage prepaid, return receipt requested; or (iii) by U.S. Express Mail or a commercial overnight courier that guarantees delivery within the next two business days. All notices complying with this Section shall be effective upon receipt. Such communication must be addressed as follows:

To the Commission: Paul Reichert, Executive Director
Montana Heritage Preservation and Development Commission
101 Reeder's Alley
Helena, MT 59601
(406) 443-2081

To the Concessionaire: _____

G. Time is of the Essence. Time is of the essence with respect to each provision of this Contract in which a definite time for performance is specified.

H. Surrender of Possession and Keys. On the last day of the term of this Contract, or in the case of earlier termination, the Concessionaire shall surrender the Facility to the Commission in good condition and repair, as well as all keys or padlocks to the Facility.

IN WITNESS OF THE TERMS SET OUT ABOVE, the parties hereto have caused this Contract to be executed.

[NAME], Concessionaire

Date

Paul Reichert, Executive Director
Commission

Date

Approved as to Form:

Department of Commerce Legal Counsel

Date

APPENDIX B: Bid Proposal Form

Virginia City/Nevada City Bid Proposal Form

Name of facility you are bidding for: _____

2) Your name, address and telephone: _____

3) Business name, address and, telephone (if applicable). List all businesses you have owned or managed.

How long in business? _____

How long in business? _____

4) Term of your proposal (3 or 5 years?): _____

5) Annual lease fee you are willing to pay: (minimum \$19,000) \$_____
(includes water/sewer fees)

6) Division of Proceeds (DOP): Offeror should propose a % DOP calculated X gross revenues beyond the first \$100,000.

7) Percentage increase you are willing to pay (lease fee and/or DOP) each subsequent year of the agreement: _____%

8) References - Offeror shall provide a minimum of three businesses, plus three credit references that have past experience with you as a business manager. At a minimum, the reference shall provide the company name, address, contact person(s), current telephone number, and a complete description of your contact with the reference and dates of the contact. The Commission reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to perform the conditions of the contract. Negative references may be grounds for proposal disqualification. **All references should include a contact person and current phone number, plus e-mail address if available.**

9) List at least three **business references** and where they can be reached.

a. Name _____
Address _____
Current Phone # _____ E-mail _____
Contact Person _____

Description of your contact with reference

Date(s) of contact

b. Name

Address

Current Phone #

E-mail

Contact Person

Description of your contact with reference

Date(s) of contact

c. Name

Address

Current Phone #

E-mail

Contact Person

Description of your contact with reference

Date(s) of contact

- 10) List three **credit references** with whom you have had accounts during the past three years. Attach letters of reference from each person listed.

a. Name

Address

Current Phone #

E-mail

Contact Person

b. Name

Address

Current Phone #

E-mail

Contact Person

c. Name

Address

Current Phone #

E-mail

Contact Person

Please answer the following questions. Unless otherwise noted, responses should be limited to no more than one typewritten page for each question.

11) Describe your business philosophy.

12) Describe your background in business. Emphasis should be placed on similar types of operations, product lines, or retail activity. Be specific with respect to size of operation, dates, and area of operation. If previous experience is not in connection with the operation of a similar type business, state why you believe you are competent to operate such a service.

13) Submit a no more than three page business plan, including how you plan to start-up your operation, a market analysis, your marketing plan, estimated ticket prices, employee training, financing, and a proposed income/expense statement. Your proposed income/expenses should include the following fixed costs:

- \$900/year – 800 phone line. 800-829-2969 is owned and managed by the Virginia City Chamber. The approximate \$3,600 annual cost is split 4 ways with the Opera House, Brewery Follies, VC Chamber and VC/NC Hotels.
- \$7,200 – Cremona musician (\$450/week X 16 weeks). The Commission agrees to pay \$100/week of the musician's \$550 salary to cover Cremona repairs.
- Resort tax – The Town of Virginia City has a 3% resort tax on all sales from May through October each year. Ticket sales have included this 3% so please consider this reduction in gross revenue when developing your income/expense statement.
- The Commission has prepaid the Opera House 2009 membership in the Virginia City Chamber to ensure that the Opera House has a listing on the Chamber website – www.virginiacity.com. Chamber membership is highly encouraged—annual cost of \$150 and can be included in income/expenses.
- The Commission has also prepaid a generic 60th Anniversary ad for the Virginia City Players in the Chamber's annual visitor guide. If this publication has not gone to press by the contract award date of December 19, 2009, Concessionaire may have the opportunity to customize this ad. If desired, ad cost should be included for subsequent years beyond 2009.
- An estimate for utilities (electric, propane, solid waste) should be included for the Opera House building, rehearsal hall, costume shack. Water/sewer costs are included in the lease amount. Additional housing at the cabins—all utilities (water/sewer, electric) are included in the \$150/month fee.

An electronic ticketing system is highly recommended to allow for online reservations and payment. Please provide details about how your tickets will be sold, system to be used, tracking and financial accounting.

Please provide your ideas for expanding use of the theatre. We would also like your ideas on promotional efforts to celebrate the 60th season of the Virginia City Players. The Commission is interested in partnering with you on making this a great celebration and commemoration.

14) Information on key employees who will manage the business:

- If an individual, full resume of all prior experience that is comparable to or speaks to the needs of the business.
- If a firm, submit a full outline of all prior businesses managed that were comparable to this business.
- Identification of the specific individuals who will be designated by the firm to manage the business.
- The identification of prior business for which those same individuals have been responsible and have accomplished the management duties required. Full resumes for those individuals.
- If a firm, submit a chart that illustrates organizational responsibility for individuals to each other.
- If a combination of individuals, a combination of firms, or a combination of firms and individuals, the information required in items #1 through #3 above, as pertinent, and an explanation of the roles that each contributing party will play and the method by which their work will be coordinated and unified.

Note: In their proposals, applicants must identify all personnel who will manage the business and their roles. Changes in managers and roles cannot occur during the project without explicit approval from the Commission.

15) Describe how your business fits into the historic themes of Virginia and Nevada Cities. What creative ideas might bring the theatre more closely to these themes?

16) Describe the products/goods to be sold, services to be provided, and any enhancements you would like to make to the current establishment. Please include your ideas for types of plays, variety shows, products to be sold, etc.

- 17) What are your proposed hours of operation and length of season?
- 18) Describe the interpretive aspects of your operation. Are there ways you might help tell the Virginia City story through your productions and other business?
- 19) How do you propose to cooperate with existing private businesses located outside of the state owned properties?
- 20) Describe how you plan to maintain your facilities.
- 21) Do you agree with the basic requirements of the Lease and Management Services Agreement (Attachment A)?

Please send your completed proposal package to the Montana Heritage Preservation and Development Commission, 101 Reeder's Alley, Helena, MT 59601. Your proposal must be **received by 5:00 p.m. Local Time, December 8, 2008.**